IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 95 of 2001

Date of decision:21.9.2006

Inder and others **Petitioners**

VERSUS

Telu Ram and others **Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Petitioners: **Mr.Ajay Sharma, Advocate.**

For the Respondents : None

Deepak Gupta, J.(Oral)

This revision petition is directed against the judgment of the learned Additional District Judge, Una, whereby he has allowed the appeal filed by plaintiffs, Telu Ram and Tirath Ram and set aside the order dated 24.11.1997 passed by the Sub Judge Ist Class (2), Una dismissing the application filed by the plaintiffs for bringing on record the legal representatives of deceased Babu Ram.

Telu Ram and Tirath Ram filed a suit against Babu Ram, deceased. Babu Ram expired on 24th May, 1996. An application under Order 22 Rule 4 read with Section 151 C.P.C. was filed on 17.10.1996 by the

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

plaintiffs and in this application it was stated that on 9.10.1996 counsel for the defendant pointed out that the defendant had expired on 24.5.1996. This fact is borne out from the order sheet dated 9.10.1996 in which it is recorded as follows:-

"It is stated that the defendant had died."

The proposed legal representatives filed reply to the application and in this reply they did not deny the averments made in para 2 of the application. The learned trial court, however, came to the conclusion that that the applicants have failed to mention any cause for filing the application beyond the period of limitation and hence dismissed the application. The learned appellate court has considered the matter in detail and has come to the conclusion that a duty was cast upon the counsel for the deceased-defendant under Order 22 Rule 10-A CPC to have disclosed this fact to the court after he became aware of the same and, therefore, the application was within time.

Mr.Ajay Sharma, learned counsel for the petitioners, has first of all urged that the appeal before the learned Additional District Judge was not maintainable since the application was filed only under Order 22 Rule 4

read with Section 151 CPC and there was no prayer made in the application for setting aside the abatement. I shall deal with this objection first. No doubt in the application there is no mention that the abatement should be set aside. Abatement is automatic in every case. Even if a formal order of abatement is not passed, a suit stands abated in case the application for bringing on record the legal representatives is not filed within the requisite time. However, it would be pertinent to mention that in the application it was specifically prayed that as per information application is moved and delay, if any, may be condoned. The learned trial court did not take into consideration this aspect of the case. An application is drafted by the counsel and not by the parties. If the counsel inadvertently or by mistake or even by negligence does not make a prayer for setting aside the abatement, the party should not suffer for his lapse. If the entire application is read in its proper context, it is obvious that the purpose of filing the application was that the legal representatives be brought on record and the suit be contested on merits. This could only have been done if the abatement is set aside. It would be pertinent to mention that this aspect of the matter was within the

knowledge of the trial court and the trial court, while dismissing the application passed an order stating that the suit stands abated. The application, though purported to have been filed only under Order 22 Rule 4 read with Section 151 CPC, must be read to be an application under Order 22 Rule 4 read with Rule 9 and Section 151 C.P.C. Hence this submission is rejected.

The apex court in **Sardar Amarjit Singh Kalra (dead) by LRs and others Vs. Pramod Gupta (Smt) (dead) by LRs and others (2003) 3 SCC 272** has held as follows:-

> "26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to

> property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice."

A perusal of this judgment of apex court clearly shows that the court has laid down that in matters relating to Order 22 Rule 4 CPC the approach of the court should be to do substantial justice between the parties and decide the matters on merits and not dispose of the matter on mere technicalities. The learned appellate court has exercised jurisdiction vested in it by law and this jurisdiction has been exercised to do complete justice between the parties. There is no infirmity in the impugned order. The revision petition is, therefore, dismissed. The case is remanded back to the learned trial court who shall restore the case to its original number and dispose of the same as early as possible.

The revision petition is disposed of in the aforesaid terms.

September 21, 2006(K) (Deepak Gupta), Judge